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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

FILE:

Office: CHICAGO

Date:

MAR 18 2004

IN RE:

Applicant:

PETITION:

Application for Certificate of Citizenship under sections 301 of the Immigration and  
Nationality Act, 8 U.S.C. § 1401.

ON BEHALF OF PETITIONER:

**PUBLIC COPY**

identifying data deleted to  
prevent unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born on May 15, 1967, in Nuevo Leon, Mexico. The record indicates that the applicant's father, [REDACTED] was born in Mission, Texas, on January 18, 1926, and that he died on October 20, 1974. The applicant's mother, [REDACTED] was born in Mexico, and is not a U.S. citizen. The applicant's parents were married on December 16, 1971, in Tamaulipas, Mexico. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The district director found the applicant had failed to establish that his father was physically present in the United States for at least 10 years, five of which were after the age of 14 and prior to the applicant's birth. The application was denied accordingly.

On appeal, counsel asserts that the applicant has provided sufficient information to establish that his father resided in the United States for the requisite period of time.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir., 2000) (citations omitted). The applicant in this case was born in Mexico in 1967. Thus, the version of section 301 of the Act that was in effect at that time, section 301(a)(7), controls his claim to derivative citizenship.

Section 301 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1401(a)(7), provides, in pertinent part, that:

(a) The following shall be nationals and citizens of the United States at birth:

...

(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years .

...

In order to meet the physical presence requirements as set forth in section 301(a)(7) of the former Act, the applicant must establish that his father was physically present in the United States for ten years between January 18, 1926, and May 15, 1967, and that five of those years were after January 18, 1940, when his father turned 14.

The record contains the following documents to support the applicant's claim that his father, Mr. [REDACTED] was a U.S. citizen and that he resided in the United States for the required period of time:

A delayed certificate of birth registered in August 1967 indicating that Mr. [REDACTED] was born in Mission Texas on January 18, 1926.

A baptismal certificate from Our Lady of Guadalupe Church in Mission, Texas, indicating that Mr. [REDACTED] was baptized on January 3, 1927.

Social Security records indicating earnings and employment in 1952 and 1953.

An affidavit from [REDACTED] (Ms. [REDACTED] the applicant's mother and Mr. [REDACTED] wife, stating that she came to the United States when she was a child. She states that she met her husband in Donna, Texas around 1949 and that they lived together in the United States until his death in 1974. She further states that the applicant was born on a brief visit to Mexico when she and her husband went to visit his parents. In her affidavit Ms. [REDACTED] indicates that it is very difficult to obtain documents verifying her husband's residence in the United States because they never paid taxes, for many years they rented a house from a woman they knew and never had a lease, they never had enough money for a bank account and never bought a home. In addition, she states that their older children never went to school, so they have no records, and her husband worked in the fields, was paid in cash and had no pay stubs.

An affidavit from [REDACTED] Mr. [REDACTED] sister-in-law, stating that she met Mr. [REDACTED] when he started a relationship with her sister when she was about 9 years old (1949) and that she saw him frequently until she returned to Mexico about 11 years later (1960). She remembered that he was living with his cousin at the time she first met him.

A letter from [REDACTED] stating that he has known Mr. [REDACTED] family since 1949 when Mr. and Mrs. [REDACTED] worked on his father's farm. He indicates that they worked for his father from 1949 until 1954. The letter also indicates that Mr. [REDACTED] is still in contact with Ms. [REDACTED] the applicant's mother.

An affidavit from [REDACTED] stating that Mr. [REDACTED] rented his mother's house in Donna, Texas from 1945 until 1969. The affidavit indicates that Mr. [REDACTED] initially lived with his cousin [REDACTED] and that [REDACTED] lived across the street.

Baptismal and birth certificates for three of Mr. and Mrs. [REDACTED] children indicating births in Donna, Texas in 1952, 1953 and 1954.

The applicant has presented little official documentation to verify his father's physical presence in the United States. Aside from his birth certificate, the only other official document is the Social Security record indicating some employment in 1952 and 1953. The claim rests largely on the various affidavits and letters presented. The AAO finds that the affidavits and letters are detailed and consistent and therefore, will give them considerable weight. In addition, the fact that three of Mr. [REDACTED] other children were born in the United States during the required period, when viewed in conjunction with the affidavits and letters, lends credibility to the applicant's assertion of his father's physical presence, at least for the years 1949 to 1965, which is sufficient to meet the requirements of section 301(a)(7) of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has met that burden.

**ORDER:** The appeal is sustained.